

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ariel Courage	Team: Squad #6	CCRB Case #: 201501832	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Sunday, 03/01/2015 3:41 AM	Location of Incident: 80 Road and Austin Street	Precinct: 102	18 Mo. SOL 9/1/2016	EO SOL 9/1/2016	
Date/Time CV Reported Sun, 03/01/2015 5:03 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 03/16/2015 11:07 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Nicholas Ruiz	16041	933304	102 PCT
2. POM Frank Lasala	18360	950727	102 PCT
3. POM Christophe Distefano	23840	950332	102 PCT
4. POM Richard Mann	02746	917918	102 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Gregory Abrahams	04441	907684	102 PCT
2. POM Jason Michaud	26656	933996	102 PCT
3. POM Matthew Hynes	28542	940279	102 PCT
4. LT Michael Edmonds	00000	930090	102 PCT
5. SGT James Centeno	02503	929864	102 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Frank Lasala	Force: PO Frank Lasala used physical force against § 87(2)(b)	
B.POM Christophe Distefano	Force: PO Christopher Distefano used physical force against § 87(2)(b)	
C.POM Richard Mann	Force: PO Richard Mann used physical force against § 87(2)(b)	
D.POM Nicholas Ruiz	Force: PO Nicholas Ruiz struck § 87(2)(b) with an asp.	

Case Summary

On March 1, 2015, Lt. Michael Edmonds of the 102nd Precinct called IAB to report an injury to a prisoner, § 87(2)(b) (original log number 15-5372). On March 16, 2015, the complaint was referred to the CCRB. On March 1, 2015, at approximately 2:41 a.m., PO Matthew Hynes and PO Jason Michaud responded to a report of a domestic dispute at § 87(2)(b), in Queens. When they arrived at that location, they encountered § 87(2)(b) who was nude but for a pair of boxers, as well as his wife, § 87(2)(b) and § 87(2)(b)-old daughter, § 87(2)(b) both of whom had visible injuries, and both of whom said § 87(2)(b) had assaulted them.

When PO Hynes and PO Michaud attempted to arrest § 87(2)(b) for assault, § 87(2)(b) fled from § 87(2)(b). PO Hynes and PO Michaud pursued § 87(2)(b) on foot to the vicinity of Grenfell Street and 80 Road, where they lost sight of him. They requested additional units. PO Richard Mann and PO Nicholas Ruiz responded. PO Michaud and PO Hynes climbed into the backseat of their RMP to continue canvassing for § 87(2)(b). Another RMP containing PO Frank Lasala and PO Christopher Distefano also responded.

While canvassing, PO Lasala and PO Distefano again saw § 87(2)(b) on 80 Road in between Austin Street and Grenfell Street. When they attempted to stop § 87(2)(b) he fled in the direction of the underpass on Austin Street that cuts beneath the Jackie L. § 87(2)(b) Parkway. PO Lasala and PO Distefano relayed their location to PO Mann and PO Ruiz. In the course of apprehending and handcuffing § 87(2)(b) PO Lasala and PO Distefano used physical force against him by bringing him to the ground and allegedly kicking and punching § 87(2)(b) (**Allegations A and B**). When PO Mann and PO Ruiz arrived, they left PO Michaud and PO Hynes locked in the backseat of their vehicle, and PO Michaud and PO Hynes therefore did not participate in the struggle with § 87(2)(b). PO Mann also assisted in handcuffing § 87(2)(b) and allegedly participated in kicking him and punching him (**Allegation C**), while PO Ruiz struck § 87(2)(b) with his asp about his upper back and the back of his head (**Allegation D**).

§ 87(2)(b) was arrested and charged with § 87(2)(a) 160.50 criminal obstruction of breathing, resisting arrest, acting in a manner injurious to a child less than 17 years of age, § 87(2)(a) 160.50 (Board Review 01).

Mediation, Civil, and Criminal Histories

This case was not eligible for mediation due to § 87(2)(b)'s arrest. As of June 3, 2015, § 87(2)(b) has not filed a Notice of Claim with respect to this incident (Board Review 03). [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) (Board Review 05).
- PO Frank Lasala has been a member of the force for three years. This is the first CCRB allegation against him.
- PO Christopher Distefano has been a member of the service for three years. § 87(2)(g)
- PO Richard Mann has been a member of the service for 18 years. § 87(2)(g)

- PO Nicholas Ruiz has been a member of the service for 11 years. Of the 12 prior allegations against him, six are allegations of physical force. One allegation against him was substantiated:
 - In case 200509501, an allegation of premises entered and searched was substantiated. The Board recommended charges and PO Ruiz received instructions.

Results of Investigation

Allegation A – Force: PO Frank Lasala used physical force against § 87(2)(b)

Allegation B – Force: PO Christopher Distefano used physical force against § 87(2)(b)

Allegation C – Force: PO Richard Mann used physical force against § 87(2)(b)

Allegation D – Force: PO Nicholas Ruiz struck § 87(2)(b) **with an asp.**

It is not disputed that some physical force was used to apprehend § 87(2)(b). § 87(2)(b) (Board Review 06) said that prior to this incident he attended a family reunion with his daughter, § 87(2)(b) where he consumed approximately five alcoholic beverages, including beer and wine. § 87(2)(b) could not estimate the period of time over which he consumed these alcoholic beverages, but said he did not feel intoxicated when he left the family reunion at 2 a.m. When § 87(2)(b) returned home, he undressed for bed and argued with his wife, § 87(2)(b) who was upset about the lateness of his return and because she smelled alcohol on his person. § 87(2)(b) denied injuring either § 87(2)(b) or § 87(2)(b) in the course of this argument. § 87(2)(b), § 87(2)(f)

Two uniformed police officers, identified by the investigation as PO Hynes and PO Michaud, then responded, at which point § 87(2)(b) fearing that he would be arrested, and clad only in his underwear, fled the apartment to the underpass on Austin Road that cuts beneath the Jackie L. Robinson Parkway. § 87(2)(b) denied ever attempting to hide from officers underneath a vehicle.

When § 87(2)(b) realized that he was being pursued by approximately five or six officers, none of whom he could describe or identify, he stopped running and put his hands up, his back turned to the officers. The officers pushed § 87(2)(b) face-first against the wall of the underpass and handcuffed him. Once § 87(2)(b) was handcuffed, he felt a blow to the back of his head from a blunt object, which later resulted in a laceration to the back of his head that did not require stitches (in his IAB statement (Board Review 08), § 87(2)(b) said he felt the blunt object strike him on his chest). § 87(2)(b) did not see the blunt object, and did not see which officer used it against him. § 87(2)(b) “began” to lose consciousness but did not actually do so. The five or six officers brought § 87(2)(b) to the ground, so that he landed on his left side. § 87(2)(b) did not remember how he was brought to the ground, but believed that the manner in which he fell caused him to sustain a scrape to his left knee and shin. Over the next two to three minutes, § 87(2)(b) felt repeated punches and kicks throughout his body, including to his head, back, and ankles, as well as repeated blows from a blunt object to his back and shoulders. § 87(2)(b) could not tell which officers, or how many, did this. An officer then placed one of his feet on top of § 87(2)(b)'s right cheek, pressing it against the ground and causing scrapes to his left cheek. § 87(2)(b) denied resisting during the struggle. He did not hear officers issue any instructions to him. § 87(2)(b) sustained a bruise on his left shoulder, but did not know what caused this injury. § 87(2)(b) was treated for his injuries at § 87(2)(b)

The Ambulance Call Report for § 87(2)(b) notes that § 87(2)(b) had an odor of alcohol on his breath. The police informed EMS that § 87(2)(b) was violent and aggressive and hit his head on the ground while resisting his arrest. § 87(2)(b) was alert but refused to speak to EMS. It was noted that he had hematoma with laceration to the back of his head without major bleeding, road rash to his left shoulder, the left side of his face, and an abrasion to his left knee. Medical records from § 87(2)(b) confirm that § 87(2)(b) had abrasions to his face, knees, knuckles, and feet, and that he had a head injury. § 87(2)(b) did not make any statements to medical staff about what occurred. Medical staff was informed by the police and by EMS that § 87(2)(b) had fallen while resisting arrest. It is noted that one of § 87(2)(b)'s "risk factors" was alcohol intake, and he was provided with information pertaining to drug addiction and treatment upon his release. However, a test for alcohol in § 87(2)(b)'s system noted only that the "converted value was not in system." The medical treatment of prisoner form, which is partially illegible, notes that § 87(2)(b) sustained a contusion to his head and scrapes, and that he was violent, intoxicated, and resisted arrest (Board Review 09).

IAB obtained video footage from § 87(2)(b) in Queens (Board Review 10), which depicts PO Hynes's and PO Michaud's arrival at § 87(2)(b) and § 87(2)(b)'s flight from the building. The video footage § 87(2)(g) appears to show that § 87(2)(b) had yet to sustain the laceration to the back of his head at the time he fled the building. IAB also obtained video footage from both a TARU camera (Board Review 11) and a camera mounted on the façade of a private house (Board Review 12) at the intersection of 80 Road and Austin Street, which depict the arrival of multiple emergency vehicles § 87(2)(g). The actual apprehension of § 87(2)(b) is not depicted in any video footage (Board Review 13).

IAB investigators took pictures of § 87(2)(b) at § 87(2)(b) depicting the following injuries: an approximately two-inch-long vertical cut to the back of § 87(2)(b)'s head (Board Review 14), multiple vertical red marks to his back as well as scratches and scrapes (Board Review 15), an abrasion to his left shoulder and small scrapes and cuts to his left breast (Board Review 16 and 17), and a dressed wound to his left cheek (Board Review 18). These injuries are also documented in § 87(2)(b)'s arrest photograph (Board Review 19). As per the IAB intake call, the officer who reported this incident to IAB, Lt. Edmonds, said that § 87(2)(b) sustained the laceration to the back of his head as a result of PO Ruiz using his asp (Board Review 08). § 87(2)(b), § 87(2)(f)

§ 87(2)(b) IAB also brought Ruiz's asp to the Police Lab at the Crime Scene Unit, where tests found it to be negative for human blood (Board Review 20).

PO Lasala (Board Review 21) said that from the intersection of Grenfell Road and 80 Road, he and PO Distefano saw § 87(2)(b) about mid-block on 80 Road between Grenfell Road and Austin Street, walking on the sidewalk in the direction of Austin Street. When PO Lasala and PO Distefano drove to the middle of block, they lost sight of § 87(2)(b). PO Lasala exited the vehicle to canvass on foot while PO Distefano remained in their vehicle, at which point § 87(2)(b) crawled out from beneath a vehicle parked at the curb and ran on 80 Road in the direction of Austin Street. § 87(2)(b) then made a left turn into the underpass. PO Lasala pursued him on foot, joined a few moments later by PO Distefano. Both of them told § 87(2)(b) "Stop, police," but § 87(2)(b) ignored these commands. When PO Lasala and PO Distefano caught up to § 87(2)(b) PO Lasala grabbed him by his right back and shoulder, and they fell to the ground, though PO Lasala did not remember what caused them to fall. § 87(2)(b) landed face-down on the ground. He attempted to push up off of the ground with his right arm bent at the elbow and braced beneath his body. PO Distefano struggled to grab § 87(2)(b).

§ 87(2)(b)'s left arm, while PO Lasala grabbed § 87(2)(b)'s right arm. Aside from positioning his arms beneath his body and attempting to push up off of the ground, § 87(2)(b) did not otherwise resist. PO Lasala used his radio to notify officers of their location. Shortly thereafter, PO Mann and PO Ruiz arrived. PO Mann assisted PO Lasala by gripping § 87(2)(b)'s right arm. PO Ruiz twice attempted to strike § 87(2)(b)'s right shoulder with his asp, but accidentally struck PO Lasala's hand both times, causing a fracture to PO Lasala's pinky and middle finger on his right hand (this injury was corroborated in AIDED and LOD paperwork (Board Review 22)). In severe pain, PO Lasala moved away from § 87(2)(b) and did not further see what occurred during the struggle. PO Lasala denied kicking or punching § 87(2)(b) stepping upon his face, or seeing any officer do so. After this incident, PO Lasala went to § 87(2)(b) and from there to the 102nd Precinct stationhouse, where he saw § 87(2)(b) and noted that there was a cleaned and dressed wound to the back of § 87(2)(b)'s head.

PO Distefano § 87(2)(g) noted that both he and PO Lasala tackled § 87(2)(b) onto the ground. PO Distefano saw the asp strike § 87(2)(b)'s right shoulder and PO Lasala's hand. PO Distefano did not remember how many times § 87(2)(b) was struck with an asp, though he knew it was more than once. He did not remember seeing the asp strike § 87(2)(b) anywhere but the right shoulder, but noted it was possible that it did as § 87(2)(b) was moving around. Seconds after PO Lasala moved away, PO Distefano was able to handcuff § 87(2)(b). He denied punching or kicking § 87(2)(b) or stepping upon his face, and did not see any officer do so.

PO Mann (Board Review 24) said that as he and PO Ruiz approached where PO Distefano and PO Lasala were struggling with § 87(2)(b) he saw § 87(2)(b) twice push himself up off of the ground. He did not see how PO Lasala and PO Distefano held § 87(2)(b) but saw that § 87(2)(b) was pushing both of them off by placing both hands on their chests. The second time, § 87(2)(b) was able to stand fully up. At this time, PO Ruiz and PO Mann approached. § 87(2)(b) was facing them at this time. PO Ruiz drew his asp and struck § 87(2)(b) one or two times about his upper torso and shoulder. As a result of these strikes, § 87(2)(b) fell back to the ground. PO Mann did not remember how § 87(2)(b) landed. He did not again see PO Ruiz strike § 87(2)(b) with his asp. Eventually § 87(2)(b) came to be face-down on the ground with his hands beneath his body. PO Mann was able to pull one of his arms behind his body and handcuff him. PO Mann knew that PO Lasala's hand was injured by PO Ruiz's asp, but did not see this occur. After the struggle, PO Mann saw a laceration to the front of § 87(2)(b)'s head. He did not know how this injury was sustained, and reviewing pictures of § 87(2)(b)'s injury did not refresh his recollection. PO Mann denied using any other physical force against § 87(2)(b).

PO Ruiz (Board Review 25) said that when he approached where PO Lasala and PO Distefano were struggling with § 87(2)(b) § 87(2)(b) was on the ground in a push-up position. PO Ruiz positioned himself directly in front of § 87(2)(b)'s head at a distance of a few inches to prevent him from standing and fleeing. While PO Ruiz stood above § 87(2)(b) § 87(2)(b) lunged forward, striking his head against PO Ruiz's leg, which resulted in no injuries to PO Ruiz. PO Ruiz then drew his asp and began striking § 87(2)(b) with it on his upper back. PO Ruiz did not remember how many times he struck § 87(2)(b) with the asp, but knew it was more than twice, and that he made contact with both the right and left sides of his back. In his memo book, PO Ruiz noted that he used his asp to prevent an officer from being assaulted, and to prevent injury to other officers; in his CCRB statement, PO Ruiz said he used it to help get § 87(2)(b) to place his arms behind his back. PO Ruiz could not estimate how many times he struck § 87(2)(b) in total. PO Ruiz did not remember seeing his asp make

contact with the back of § 87(2)(b)'s head, and did not intentionally aim for that part of his body. Once PO Ruiz saw PO Lasala moving away from § 87(2)(b) clutching his hand, he left the struggle to ensure that PO Lasala was all right. As PO Ruiz left the struggle, he holstered his asp. He did not clean it prior to holstering it, and did not observe any blood on the asp. Once he saw that PO Lasala was receiving medical attention, PO Ruiz returned to wait with § 87(2)(b) for an ambulance. At this time, PO Ruiz noticed marks to § 87(2)(b)'s back, which he believed were from the asp, though he did not remember how many he saw. He also saw that § 87(2)(b) was bleeding from the back of his head. He did not know what caused this injury.

Sgt. Centeno (Board Review 30) said that when responded to the scene, § 87(2)(b) was “violently” struggling with three or four officers, including PO Ruiz and PO Lasala, by flailing his arms as though attempting to grab their legs. Sgt. Centeno saw PO Ruiz strike § 87(2)(b) with his asp more than once, though he could not be more specific as to how many times, and did not see where the strikes landed. After § 87(2)(b) was handcuffed, Sgt. Centeno observed a cut to the back of his head. PO Ruiz told Sgt. Centeno that he may have accidentally struck § 87(2)(b) on the head with his asp. When presented with pictures of the red marks to § 87(2)(b)'s back, Sgt. Centeno noted the marks were consistent with asp strikes, though he did not actually know how these marks were sustained.

PO Hynes (Board Review 26) denied witnessing the struggle between officers and § 87(2)(b) because he was locked in the backseat of PO Ruiz's and PO Mann's vehicle.

Officers must use only the minimum amount of force necessary to overcome resistance. Patrol Guide Procedure 203-11 (Board Review 27) A baton or nightstick blow to the head constitutes deadly force. PD v. Bolusi, OATH Index No. 593-92 (June 5, 1992) (Board Review 28). Officers are prohibited from using deadly physical force unless they have probable cause to believe that they must protect themselves or another person from imminent death or serious physical injury. Patrol Guide Procedure 203-12 (Board Review 29)

§ 87(2)(g)

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Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
 Title/Signature Print Date

Reviewer: _____

	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date